No. 14,098

IN THE

United States Court of Appeals

For the Ninth Circuit

INTERNATIONAL LONGSHOREMEN'S AND WAREHOUSEMEN'S UNION, LOCAL 142, an Unincorporated Association,
Appellant,

vs.

LIBBY, McNEILL & LIBBY, a Corporation,
Appellee.

On Appeal from the District Court of the United States for the District of Hawaii.

BRIEF FOR APPELLEE.

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Subject Index

Table of Authorities Cited

Cases

Statutes

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BRIEF FOR APPELLEE.

NATURE OF ACTION.

This action was brought in the United States District Court for the District of Hawaii on May 29, 1952, by the International Longshoremen's and Warehousemen's Union, Local 142, hereinafter called the "Appellant", against Libby, McNeill & Libby, hereinafter called the "Appellee". The action was commenced to secure a declaratory judgment and injunctive relief (R. 3-9). The jurisdiction of the dis-

trict court was based upon Section 301(a) of the Labor Management Relations Act, 1947, 29 U.S.C. Sec. 185(a), and upon the Federal Declaratory Judgment Act, 28 U.S.C. Sections 2201-2202 (R. 5). The Appellee filed an answer on September 2, 1952 (R. 9-17). Thereafter on May 30, 1953, the district court issued an order for a pre-trial hearing. After a pre-trial hearing pursuant to said order, the district court entered its Pre-Trial Order on May 11, 1953 (R. 18-23).

Following a hearing, the district court filed a decision on August 6, 1953 in which it held the case must be dismissed for the reason that the court does not have the power to grant the relief prayed for (R. 23-30). An Order of Dismissal was thereupon entered on August 12, 1953 (R. 30-31). A Motion for New Trial made by the Appellant was denied by the district court on September 25, 1953 (R. 37-40). Appellant's Notice of Appeal was filed on October 1, 1953 (R. 40-41).

STATUTORY PROVISIONS INVOLVED.

Section 301 of the Labor Management Relations Act, 1947, 29 U.S.C. Sec. 185, and the Federal Declaratory Judgment Act of 1934, 28 U.S.C. Sections 2201-2202, are involved herein. Pertinent portions of these will be set forth in appropriate places in the argument.

STATEMENT OF THE CASE.

The Appellant entitled its initial pleading in this action "Complaint for Breach of Contract and for Declaratory Judgment" (R. 3). The complaint alleges that the action of the Appellee in terminating the employment of a certain named employee solely on the ground that she had reached the age of 65 years was a violation of the collective bargaining agreement (R. 5, 6) to which Appellant and Appellee are bound (R. 4). The Pre-Trial Order contains the same contention of law (R. 21). It appears on the face of the complaint that the agreement expires February 1, 1953 (R. 4). The admitted refusal of the Appellee to arbitrate the issue of the employee's termination was also alleged to be a violation of the agreement (R. 6, 21). The complaint further alleges that, unless the Appellee is restrained and enjoined, many employees will be similarly terminated at the age of 65 years pursuant to the Appellee's policy of terminating the employment of all employees at that age (R. 7).

As a basis for equitable relief by way of injunction, the complaint alleges avoidance of multiplicity of suits, avoidance of irreparable injury to Appellant and absence of a plain, speedy or adequate remedy at law (R. 8). The prayer (R. 8, 18) asks (1) for a declaratory judgment declaring the rights of the parties under the agreement and specifically declaring that the Appellee breached the agreement in removing the employee in question from its payroll and (2) for an injunction restraining the Appellee from

removing from its payroll any other employee covered by the agreement solely upon the ground that the employee has reached the age of 65 years.

Following a hearing pursuant to the court's Pretrial Order, the district court dismissed the case on the ground that the court had no jurisdiction under Section 185 of Title 29 U.S.C. to hear a case "in which the demand is for an injunction of breach of a labor relations contract after a declaration of the rights of the parties" (R. 29, 30).

QUESTIONS PRESENTED.

The principal question presented by this appeal is whether a suit, by a party to a collective bargaining agreement between an employer and a union representing employees in an industry affecting commerce, seeking to enjoin the employer from continuing to carry out a retirement policy alleged to be in violation of the agreement, is within the jurisdiction of the federal district courts under Section 301 of the Labor-Management Relations Act, 1947.

A secondary question, however, is also presented, namely: if such an action is not within the jurisdiction of the district court, does the mere fact that the petitioner also seeks a declaration that the conduct alleged is a violation of such an agreement confer jurisdiction on the court to grant such declaratory relief under the Federal Declaratory Judgment Act?

SUMMARY OF ARGUMENT.

This appeal turns primarily on the interpretation of Section 301 of the Labor Management Relations Act, 1947, 29 U.S.C. Sec. 185, commonly referred to as the Taft-Hartley Act.[1] There is no basis for federal jurisdiction of the parties and the subject matter in this case unless Congress conferred such jurisdiction under Section 301. The Federal Declaratory Judgment Act, 28 U.S.C. Sections 2201-2202,[2] has no bearing on the question of federal jurisdiction in this sense since it is not a jurisdiction-conferring act. *Skelly Oil Co. v. Phillips Petroleum Co.,* 339 U.S. 667 (1950); *California Ass'n of Employers v. Build-*

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[1]Sec. 301(a) provides:

"(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined by this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

[2]Following is the full text of the Federal Declaratory Judgment Act:

"Sec. 2201. Creation of remedy

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights of and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Sec. 2202. Further relief

Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment."

ing and Construction Trades Council, 178 P. 2d 175 (CA 9 1949).

The district court held that Section 301, viewed in the light of its legislative history and the jurisdictional limitations imposed by the Norris-LaGuardia Act, 29 U.S.C. Sections 101-115, did not confer upon the federal courts jurisdiction of an action such as this. No matter how the Appellant chooses to characterize its petition here, it is, in essence, in the nature of an equitable action to enjoin an employer from continuing to carry out a policy of retiring employees at the age of 65 years, which conduct is alleged to be in violation of a collective bargaining agreement between the employer and a union representing employees in an industry affecting commerce. Only a few federal courts have thus far considered the question of federal jurisdiction of injunction suits under Section 301. The Courts of Appeal of the Second and Sixth Circuits are in direct conflict on this point. *Alcoa S. S. Co. v. McMahon,* 81 F. Supp. 541 (S.D. N.Y. 1948), *aff'd,* 173 F. 2d 567 (CA 2 1949), *cert. denied,* 338 U.S. 821 (1949); *American Federation of Labor v. Western Union Tel. Co.,* 179 F. 2d 535 (CA 6 1950). The court in the *Alcoa* case held that federal courts do not have jurisdiction in such suits, and the court in the *Western Union* case held that the federal courts do have such jurisdiction. The view taken by the court in the *Western Union* case, we submit, cannot be supported by the language and history of the Taft-Hartley Act and is inconsistent with the Norris-LaGuardia Act.

By this we do not maintain that a proper federal case for a declaration of rights under a collective bargaining agreement could not be made out. We do contend that an action in the nature of a bill in equity for an injunction to prevent alleged breaches of a collective bargaining agreement, such as involved here, is not within the jurisdiction of the federal courts under Section 301 of the Taft-Hartley Act, and that the mere fact that declaratory relief is also requested cannot bring the case within the court's jurisdiction.

ARGUMENT.

THE APPELLANT'S SUIT TO ENJOIN THE ALLEGED BREACH OF A COLLECTIVE BARGAINING AGREEMENT IS NOT WITHIN THE JURISDICTION OF THE DISTRICT COURT UNDER SECTION 301 AND, THEREFORE, DENIAL OF BOTH INJUNCTIVE AND DECLARATORY RELIEF AND DISMISSAL OF THE CASE BY THE DISTRICT COURT WAS MANDATORY.

The Appellant in this case has attempted to establish federal jurisdiction by means which, in *Doehler Metal Furniture Co. v. Warren,* 129 F. 2d 43 (D.C. Cir. 1942), the late Chief Justice Vinson, then Judge of the Court of Appeals for the District of Columbia, termed "a clever use of remedies." The petition here is in substance a suit in equity for an injunction of an alleged breach of a collective bargaining agreement (R. 25). At the time the petition was filed, the Appellant was no doubt aware of decisions such as *Alcoa S. S. Co. v. McMahon,* 81 F. Supp. 541 (S.D. N.Y. 1948), *aff'd,* 173 F. 2d 567 (CA 2 1949), *cert.*

denied, 338 U.S. 821 (1949), in which the court held that there is no original federal jurisdiction of such a suit under Section 301. The same view has since been adopted by the court below in an action involving another local of the same international union with which Appellant is affiliated. *Castle & Cooke Terminals, Ltd., v. Local 137 of the International Longshoremen's and Warehousemen's Union,* 110 F. Supp. 247 (D.C. Hawaii 1953). Apparently it was the Appellant's intention in this case to attempt to avoid the effect of the *Alcoa* decision by adding a prayer for declaratory relief to an equitable petition for an injunction. Such a device cannot increase the jurisdiction of the federal courts.

1. The Federal Declaratory Judgment Act is not a jurisdiction-conferring statute.

The holding of the district court that the Federal Declaratory Judgment Act is not a ground of federal jurisdiction is no longer open to question. *Southern Pacific Co. v. McAdoo,* 82 F. 2d 121 (CA 9 1936); *Marshall v. Crotty,* 185 F. 2d 622 (CA 1 1950); *Putnam v. Ickes,* 78 F. 2d 223 (D.C. Cir. 1935); *Doehler Metal Furniture Co. v. Warren,* 129 F. 2d 43 (D.C. Cir. 1942).

In the *Southern Pacific* case this court has already so held, stating at page 122:

> "The Declaratory Judgment Act * * * is limited in its operation to those cases which would be within the jurisdiction of the federal courts if affirmative relief were being sought * * * The

> mere fact that a declaratory judgment is sought is not, of itself, a ground of federal jurisdiction."

Federal jurisdiction of this action, therefore, must be found outside the Federal Declaratory Judgment Act.

2. This is an action in equity for an injunction.

If the prayer for declaratory relief in this case is deleted from the petition, the real subject matter of the suit becomes at once apparent: it is a claim that the act of the Appellee in retiring a certain employee was a violation of a collective bargaining agreement and that similar acts are threatened and imminent. There follow certain allegations intended to establish equitable jurisdiction coupled with a prayer that such acts be enjoined. Whatever label the Appellant may choose to place on this case, the nature of the action is inescapable. It is a suit for an injunction of the breach of a collective bargaining agreement, without allegations of diversity and jurisdictional amount in controversy. The injection of the prayer for declaratory relief serves only to confuse the real issues involved. The petition here requires no adjudication of rights under the agreement beyond those upon which the immediate injunctive relief must necessarily be based. Calling a case such as this an action for a "declaratory judgment", therefore, is senseless. This point was well put by Judge Learned Hand in the following dictum from *Corcoran v. Royal Development Company,* 121 F. 2d 957, 958 (CA 2 1941), *cert. denied,* 314 U.S. 691 (1941):

> "The parties and the Judge speak of this as an action for a 'declaratory judgment' under Sec. 400 of Title 28 U.S.C.A. and it is true that Sec. 400(1) includes cases where some immediate relief is asked in addition to a 'declaration' of rights. The purpose of this is apparent; there may be situations in which a plaintiff needs immediate relief, but also needs an adjudication of rights other than those upon which the immediate relief is dependent. In such situations the action has two aspects: in part it is an ordinary action; in part it is an action for 'declaratory judgment'. But it is absurd to speak of a judgment as declaratory in so far as it declares no more than is necessary to sustain the immediate relief prayed, for in that sense every action is for a 'declaratory judgment'. A court cannot grant any relief whatever except as it finds, and by finding 'declares', that the plaintiff has those rights on which the remedy must be based. In the case at bar the complaint asks the 'declaration' of no rights that woud not have to be adjudicated before there could be a distribution of the defendant's assets; and stripped of its verbiage, the complaint is no more than a simple creditor's action, asking the distribution of a corporation's assets in equity. We do not mean to imply that jurisdiction of the district court could be determined by a different rule if it had been for a 'declaratory judgment', but the authorities are more literally in point if we treat it as what it really is."

In the same way the case at bar, when stripped down to its essentials, becomes an action in equity for an

injunction against the continuation of an alleged breach of a collective bargaining agreement. The crucial question in this appeal, then, is reduced simply to whether such an action is within the jurisdiction of the federal courts under Section 301.

3. Jurisdiction of injunction suits is not granted to the district courts by Section 301.

Appellant in its opening brief takes the position that because Section 301(a) itself contains "no words of limitation with respect to the nature of a suit over which the court has jurisdiction" (Opening Brief 6), no such limitation can exist. It is claimed that the language of Section 301 is clear and, therefore, that the district court erred in looking outside that section to ascertain the scope of jurisdiction conferred by it. The district court, however, properly recognized that it could not ignore the jurisdictional limitations imposed on federal courts by the Norris-LaGuardia Act. That act places strict limitations on federal jurisdiction of injunction suits in the field of labor disputes. The district court was confronted at the outset, therefore, with the question whether Section 301 was intended to set aside the restrictions of the Norris-LaGuardia Act. The legislative history of the Taft-Hartley Act, the court concluded, showed no such intent.

The courts have frequently pointed out that Congress has been careful to spell out in detail any grant of jurisdiction of injunction suits in the field of labor relations. *Alcoa S. S. Co. v. McMahon,* 81

F. Supp. 541 (S.D. N.Y. 1948), *aff'd,* 173 F. 2d 567 (CA 2 1949), *cert. denied,* 338 U.S. 821 (1949); *Haspel v. Bonnaz, Singer & Hand Embroiderers, Tuckers, Stitchers & Pleaters Union, Local 66,* 112 F. Supp. 944 (S.D. N.Y. 1953); *Duris v. Phelps-Dodge Copper Products Corp.,* 87 F. Supp. 229 (D.C. N.J. 1949); *Local 937, Etc. v. Royal Typewriter Co.,* 88 F. Supp. 669 (D.C. Conn. 1949); and *United Packing House Workers v. Wilson & Co.,* 80 F. Supp. 563 (N.D. Ill. 1948). The Taft-Hartley Act is no exception. It is significant that Section 301 makes no specific or implied grant of jurisdiction to federal district courts of injunction suits by private parties. The same is true of Section 303. In the very same act, on the other hand, Congress was careful to specify in Section 10(l) certain situations in which district courts could entertain petitions by public officers for injunctive relief for the prevention of some particularly grievous forms of unfair labor practices. Again in Section 10(j), the district courts were given jurisdiction to grant to the National Labor Relations Board appropriate injunctive relief in unfair labor practice cases. Section 10(h), moreover, specifically provides that "the jurisdiction of courts sitting in equity shall not be limited by" the Norris-LaGuardia Act with respect to such petitions. Similarly, Section 208 of the Taft-Hartley Act grants jurisdiction to the district courts to enjoin, on petition of the Attorney General at the direction of the President, certain strikes and lockouts imperiling the national health and safety. Here again Section 208(b) specifically makes the Nor-

ris-LaGuardia Act inapplicable in such suits. It must be borne in mind that all of these provisions are found in the very same Act as Section 301. The conclusion is inescapable that if Congress had intended under Section 301 to confer upon federal courts sitting in equity jurisdiction to entertain injunction suits on the petition of private parties, it would have specifically conferred such jurisdiction and specifically made the Norris-LaGuardia Act inapplicable, as it did in Sections 10 and 208 of the Act. This it did not do. For the courts to read such provisions into the general language of Section 301, as a few courts, including one court of appeals, have done, is nothing less than judicial legislation in a field in which Congress has enacted comprehensive legislation relative to labor problems and has carefully defined the respective jurisdiction of the federal courts and administrative agencies, particularly in the matter of injunctions. The court in the *Haspel* case, *supra,* put this tersely when it said at page 946:

> "In a field noted for its delicate problems and in which Congress has erected an elaborate statutory machinery to cope with these problems and in an Act in which Congress has been careful to spell out the remedies it intended to grant, especially injunctive ones, I would hesitate to imply any remedy not expressly provided for by Congress."

This conclusion is not only a necessary one in the light of the language of the Taft-Hartley and Norris-LaGuardia Acts read as a whole; it is fortified by the

legislative history of the Taft-Hartley Act. The district court in its decision in the *Alcoa* case, which was affirmed by the Court of Appeals for the Second Circuit, illustrated this point forcefully when it said at page 543:

> "But Congress did not, in conferring such jurisdiction, expressly withdraw the restrictions of the Norris-LaGuardia Act. Rather, the Senate Report acknowledged that the Norris-LaGuardia Act and many state statutes modeled upon it barred injunctive relief for the enforcement of such agreements. Sen. Rep. No. 105, supra, p. 17; see International Longshoremen's and Warehousemen's Union v. Sunset Line & Twine Co., D.C. N.D. Cal. 1948, 77 F. Supp. 119, 122. Nor can it be implied that Congress intended that the jurisdiction conferred by Sec. 185 should be free of the Norris-LaGuardia Act. In other instances in the same Act, where Congress so intended, it expressly lifted the bar of the Norris-LaGuardia Act. Illustrative are Sections 186, 178. This conclusion is buttressed by the legislative history of the Taft-Hartley Act. The Senate bill, S. 1126, 80th Cong., 1st Sess., 1947, made violation of a collective bargaining agreement an unfair labor practice, subject to injunction as such; Sec. 8(b)(5), Sec. 8(a)(6), S. 1126, 80th Cong., 1st Sess., introduced April 17, 1947. This provision was deleted before final passage. Both the Senate bill and the House bill, H. R. 3020, 80th Cong., 1st Sess., 1947, authorized suits for breach of collective bargaining agreements to be brought in the federal courts, and the House bill specifically provided that the Norris-LaGuardia Act be inappli-

> cable to such suits; Sec. 302(3), H. R. 3020, supra. This provision too was deleted before final adoption of the measure. See Conference Committee Report, Labor Management Relations Bill, 1947, H. R. 3020, 80th Cong., 1st Sess., June 3, 1947."

District courts in other circuits have reached the same conclusion. For example, the court in *Duris v. Phelps-Dodge Copper Products Corp.,* 87 F. Supp. 229 (D.C. N.J. 1949) in rejecting the contention that Section 301 repeals the jurisdictional limitations of the Norris-LaGuardia Act, approved the reasoning of Judge Rifkind in the *Alcoa* case, stating at page 232:

> "Having found in that case that he had a labor problem before him, he concluded that a suit under Sec. 185(a) opened the door for a money judgment only and no equitable relief could be granted."

Similarly, in *Local 937, Etc. v. Royal Typewriter Co.,* 88 F. Supp. 669 (D.C. Conn. 1949) the court having before it an action for damages and injunction for breach of a collective bargaining agreement said at page 669:

> "It is a labor dispute and I agree with Judge Rifkind that Congress would have been more specific if it intended to restore the general power to grant injunctive relief."

To the same effect, the court, in *United Packing House Workers v. Wilson & Co.,* 80 F. Supp. 563 (N.D. Ill. 1948), said at page 567:

> "It is * * * clear that Congress did not intend either by expression or necessary implication, that private parties should have a right to injunctive relief even as an auxiliary remedy in the permitted suit for damages."

And again at page 570:

> "If the plaintiff can plead and establish a claim for damages growing out of a breach of its contract, Sec. 301(a) of the Labor-Management Relations Act of 1947 confers jurisdiction upon this Court to hear and determine such a suit."

The decisions cited by Appellant in its opening brief, [*American Federation of Labor v. Western Union Tel. Co.*, 179 F. 2d 535 (CA 6 1950); *Milk & Ice Cream Drivers v. Gillespie Milk Products Corp.*, 203 F. 2d 650 (CA 6 1953); *Textile Workers Union v. Aleo Manufacturing Co.*, 94 F. Supp. 626 (M.D. N.C. 1950); *Mountain States Division No. 17 Communications Workers of America v. Mountain States Telephone & Telegraph Co.*, 81 F. Supp. 397 (D.C. Colo. 1948); and *Textile Workers Union of America v. American Thread Co.*, 113 F. Supp. 137 (D.C. Mass. 1953)], all of which appear to be in direct conflict with the cases hereinabove cited, are, we submit, poorly reasoned. They focus attention on the brief and general language of Section 301(a), without giving sufficient consideration to other provisions of the Act, such as Section 10(h)(j) and (l) and Section 208(a) and (b). They ignore the legislative history which the court reviewed in the *Alcoa* case. When

these points are considered, it becomes clear that Congress in enacting the Taft-Hartley Act intended to preserve the policies of the Norris-LaGuardia Act except to the extent specifically provided in Sections 10 and 208.

4. The district court has no power to grant declaratory relief in an injunction suit which is not within its jurisdiction.

The Appellant argues that even though the district court concluded that Section 301 does not open the federal courts to injunction suits, declaratory relief nevertheless should have been granted. This argument overlooks two points stated earlier in this brief: *first,* the district court has power to grant declaratory relief only in cases "within its jurisdiction". We have already shown that, with the exception of a prayer for declaratory relief, the case at bar is nothing more or less than an injunction suit brought under Section 301 before a federal court sitting in equity for an injunction of alleged breach of a collective bargaining agreement. We have noted a conflict of authority as to whether such suits are within the jurisdiction of federal courts under Section 301. The better view, we contend, holds that no jurisdiction of such cases exists under Section 301. *Secondly,* the "rights" with respect to which the Appellant seeks a declaration would of necessity have to be determined in connection with the Appellant's suit for affirmative, equitable relief. It is absurd, therefore, to call this case an action for a "declaratory judgment".

Moreover, there is no point here in discussing the question whether a prayer for declaratory relief may properly be joined with a cause of action otherwise within the jurisdiction of the court, such as an action for damages under Section 301, since that is not this case. In this connection, however, we should like to clarify a misleading use of *United Protective Workers of America v. Ford Motor Co.,* 194 F. 2d 997 (CA 7 1952) made in Appellant's opening brief. The statement is made at page 10 of that brief that the suit in the *Ford* case was "for declaratory judgment and further relief" and that "jurisdiction to grant declaratory relief was not questioned". It is true that the court of appeals in the *Ford* case held that a complaint for declaratory relief could be joined with one for damages. It must be noted, however, that the individual employee involved in that case was joined as a party plaintiff and that necessary allegations of diversity and amount in controversy were made. To that extent, then, jurisdiction of the federal court under Section 301 was of no importance. Moreover, the Court of Appeals in the *Ford* case specifically declined to rule on the applicability of the Norris-LaGuardia Act to injunction suits under Section 301, inasmuch as it held that the complaint failed to show that the plaintiffs had no adequate remedy at law. We fail to see, therefore, how the *Ford* case lends any weight to the Appellant's argument here.

Similarly the Appellant's opening brief misuses *Alcoa S. S. Co. v. McMahon,* 81 F. Supp. 541 (S.D. N.Y.

1948), *aff'd,* 173 F. 2d 567 (CA 2 1949), *cert. denied,* 338 U.S. 821 (1949). The brief states at page 10:

> "In the *Alcoa* case, a declaratory judgment was entered even though the court said that injunctive relief was precluded by the Norris-LaGuardia Act."

The fact is that no relief whatever was granted in the case cited by Appellant. The decision in the *Alcoa* case merely discloses that declaratory relief had been granted in some *prior* action. Before what court that prior case was brought, the nature of the complaint therein, and the basis of federal jurisdiction thereof are not disclosed in the *Alcoa* case. Nor have we found any report of the decision in that earlier case. Nevertheless, we can assume that the plaintiff or plaintiffs in the earlier action did establish grounds for federal jurisdiction. It is quite another matter to cite the *Alcoa* case, as the Appellant has done, as holding that a federal court has the power to grant declaratory relief where a suit in such a court sitting in equity is brought under Section 301 to enjoin the alleged breach of a collective bargaining agreement. The *Alcoa* case simply does not so hold. The authority of the *Alcoa* case must necessarily be to the contrary, since, as we have already shown, its clear holding is that such a suit is not within its jurisdiction.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be affirmed.

Dated, Honolulu, T. H.,
January 25, 1954.

Respectfully submitted,
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